***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION NO : 17959 of 2004

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% 23.12.2004

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Between:

V.V.Subba Rao S/o.Venkatramaiah & another.

... PETITIONER

AND

The Collector and District Magistrate, Prakasam District,

At Ongole, & another.

...RESPONDENTS

! COUNSEL FOR THE PETITIOENR: MR.O.MANOHER REDDY

^ COUNSEL FOR THE RESPONDENTS: G.P.FOR CIVIL SUPPLIES

< Gist:

> Head Note:

? CITATIONS:

1) 2002(6) ALD 585

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 17959 of 2004

Between:

1 V.V.Subba Rao, s/o Venkatramaiah,
r/o Kanigiri Town and Mandal, Prakasam District.
2 Gunupaty Guruswamy Reddy, s/o Obul Reddy,
r/o Yeruvuvaripalli Village, Kanigiri Mandal,

Prakasam District.

... PETITIONERS

AND

1 The Collector and District Magistrate,

Prakasam District at Ongole.
2 The District Supply Officer, Ongole, Prakasam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of mandamus or any other appropriate writ or direction declaring the order of the 1st respondent passed in Rc.No.CS1/6A/12/2004 dated 28-9-2004 in continuing the proceedings under Section 6(A) of the Essential Commodities Act as illegal arbitrary and one without jurisdiction and consequently direct the respondents to drop the enquiry under section 6(A) of the Essential Commodities Act and release the seized stocks in favour of the petitioner without insisting for bank guarantee.

Counsel for the Petitioners: MR.O.MANOHER REDDY

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the admission stage made the following :

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O R D E R:

The petitioners challenge the order dated 28.09.2004, where under the first respondent directed the petitioners to produce bank guarantee for 50% of the value of the seized stocks, namely Rs.4,12,718/-, as a condition precedent, for releasing the same.

The second respondent, District Supply Officer, visited the rice mill being run by the petitioners, on 6.6.2004. He effected seizure of 657 quintals of paddy, 282 quintals of rice, 60 quintals of broken rice and another quantity of 171.75 quintals of rice said to be meant for Public Distribution System. The allegation for seizure was that the quantities of rice were found in loose heaps, the petitioners purchased the rice meant for Public Distribution System/Food For Work, and were purchasing the paddy, without paying the minimum support price to the farmers. When the petitioners approached the first respondent, for release of the stocks, he passed an order dated 13.08.2004, directing release, on furnishing bank guarantee for the value of the entire stock, which was assessed at Rs.8,25,435/-. Thereafter, the petitioners filed another representation, bringing to the notice of the first respondent that the food grains were removed from the purview of the A.P. Schedule

Commodities Dealers (Licence & Distribution) Order, 1982, and A.P. Rice Procurement (Levy) Order, 1984. Acting on the same, the first respondent modified the order dated 13.08.2004, and reduced the bank guarantee to be furnished, to half of the value of the seized stock.

Learned counsel for the petitioners submits that once it has emerged that there are no restrictions on the movement of paddy, rice and broken rice within the country, the very seizure was without basis, and imposition of condition for release of the same cannot be sustained in law. He places reliance upon judgment of this Court in **SHEELA SRINIVAS v. DISTRICT COLLECTOR, KARIMNAGAR.**

Learned Government Pleader for Civil Supplies, on the other hand, submits that though there are no restrictions on the movement of rice, paddy and other related produces, the question as to whether the petitioners violated any other provisions of law, needs to be considered in the proceedings under Section 6-A of the Essential Commodities Act, and it was with a view to protect the interest of the State and the petitioner that the first respondent imposed the condition referred to above.

The trade in rice and paddy used to be regulated under various Control Orders, passed by the appropriate Governments, in exercise of powers under the Essential Commodities Act. The entire legal regime in this regard has undergone a substantial change with the issuance of the notification by the Central Government on 15.02.2002, as well as corresponding memo by the Government of A.P. on 27.03.2002, removing all restrictions for stocking and movement of paddy and rice in the State. When a doubt was expressed by some of the authorities in the concerned department, the Commissioner of Civil Supplies issued clarification under the proceedings dated 12.08.2002, stating that in view of the change in the law on the subject even where a trader is found to have indulged in purchasing rice meant for Food For Work, the only course open to the authorities is to initiate proceedings under the Code of Criminal Procedure. This Court had an occasion to deal with the issue in **Sheela Srinivas v. District Collector** (supra)**.** The seizure of huge quantity of rice, paddy etc., affected under similar circumstances, was held to be illegal.

The first respondent was informed about the legal position. He did not dispute about the same and in fact, took note of it. However, he has chosen to modify his earlier order, by restricting the bank guarantee to be furnished, to half of the value of the seized stocks. Once there does not exist any power in him to effect seizure, the question of insisting the petitioners to furnish bank guarantee does not arise.

Hence, the writ petition is allowed, and the impugned order is set aside. The respondents are consequently directed to release the stocks of paddy, rice, broken rice etc., seized from the petitioners forthwith, without insisting on furnishing of any bank guarantee. There shall be no order as to costs.

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23rd December, 2004

Note: L.R. copy to be marked.

(B/o)

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(One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy, for his Lordship's kind perusal)

To

1 The Collector and District Magistrate,

Prakasam District at Ongole.

2 The District Supply Officer, Ongole, Prakasam District.

3 Two C.Cs. to the Government Pleader for Civil Supplies,

High Court buildings, Hyderabad (OUT)

4 Two C.D.copies

5 8 L.R.copies.

6 The Principal Secretary, Union of India, Ministry of Law,

Justice and Company Affairs, New Delhi.

7 The Secretary, A.P.Advocates Association, Library,

High Court buildings, Hyderabad.